

them to the extent that they are applicable. The Commission expects the Licensing Boards to pay particular attention in their decisions to analyzing the evidence on those safety and environmental issues arising under applicable Commission regulations and policies which the Boards believe present serious, close questions and which the Boards believe may be crucial to whether a license should become effective before full appellate review is completed. Furthermore, the Boards should identify any aspects of the case which in their judgment, present issues on which prompt Commission policy guidance is called for. The Boards may request the assistance of the parties in identifying such policy issues but, absent specific Commission directive, such policy issues shall not be the subject of discovery, examination, or cross-examination.

(2) *Commission.* (i) Reserving the power to step in at an earlier time, the Commission will, upon receipt of the Licensing Board decision authorizing issuance of an operating license, other than a decision authorizing only fuel loading and low power (up to 5 percent of rated power) testing, review the matter on its own motion to determine whether to stay the effectiveness of the decision. An operating license decision will be stayed by the Commission, insofar as it authorizes other than fuel loading and low power testing, if it determines that it is in the public interest to do so, based on a consideration of the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by operation pending review, and other relevant public interest factors.

(ii) For operating license decisions other than those authorizing only fuel loading and low power testing consistent with the target schedule set forth below, the parties may file brief comments with the Commission pointing out matters which, in their view, pertain to the immediate effectiveness issue. To be considered, such comments must be received within 10 days of the Board decision. However, the Commission may dispense with comments by so advising the parties. No extensive

stay shall be issued without giving the affected parties an opportunity to be heard.

(iii) The Commission intends to issue a stay decision within 30 days of receipt of the Licensing Board's decision. The Licensing Board's initial decision will be considered stayed pending the Commission's decision insofar as it may authorize operations other than fuel loading and low power (up to 5 percent of rated power) testing.

(iv) In announcing a stay decision, the Commission may allow the proceeding to run its ordinary course or give instructions as to the future handling of the proceeding. Furthermore, the Commission may in a particular case determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

(g) The Commission's effectiveness determination is entirely without prejudice to proceedings under § 2.786 or § 2.788.

[36 FR 828, Jan. 19, 1971, as amended at 45 FR 74711, Nov. 12, 1980; 46 FR 13978, Feb. 25, 1981; 46 FR 28628, May 28, 1981; 46 FR 47765, Sept. 30, 1981; 47 FR 2305, Jan. 15, 1982; 47 FR 40536, Sept. 15, 1982; 48 FR 52286, Nov. 17, 1983; 54 FR 7757, Feb. 23, 1989; 54 FR 14944, Apr. 14, 1989; 56 FR 29408, June 27, 1991; 60 FR 20886, Apr. 28, 1995]

**§ 2.765 Immediate effectiveness of initial decision directing issuance or amendment of licenses under part 61 of this chapter.**

An initial decision directing the issuance of a license under part 61 of this chapter (relating to land disposal of radioactive waste) or any amendment to such a license authorizing actions which may significantly affect the health and safety of the public, will become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards may not issue a license under part 61 of this chapter, or any amendment to such a license which may significantly affect the health and safety of the public, until expressly authorized to do so by the Commission.

[47 FR 57478, Dec. 27, 1982]

## Nuclear Regulatory Commission

## § 2.780

### FINAL DECISION

#### § 2.770 Final decision.

(a) The Commission will ordinarily consider the whole record on review, but may limit the issues to be reviewed to those identified in an order taking review.

(b) The Commission may adopt, modify, or set aside the findings, conclusions and order in the initial decision, and will state the basis of its action. The final decision will be in writing and will include:

(1) A statement of findings and conclusions, with the basis for them on all material issues of fact, law or discretion presented;

(2) All facts officially noticed;

(3) The ruling on each material issue; and

(4) The appropriate ruling, order, or denial of relief, with the effective date.

[27 FR 377, Jan. 13, 1962, as amended at 48 FR 52286, Nov. 17, 1983; 56 FR 29409, June 27, 1991]

#### § 2.771 Petition for reconsideration.

(a) A petition for reconsideration of a final decision may be filed by a party within ten (10) days after the date of the decision.

(b) The petition for reconsideration shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the petition, and the relief sought. Within ten (10) days after a petition for reconsideration has been filed, any other party may file an answer in opposition to or in support of the petition. However, the staff may file such an answer within twelve (12) days after a petition for reconsideration has been filed.

(c) Neither the filing nor the granting of the petition shall stay the decision unless the Commission orders otherwise.

[27 FR 377, Jan. 13, 1962, as amended at 31 FR 4340, Mar. 12, 1966; 43 FR 17802, Apr. 26, 1978; 48 FR 52286, Nov. 17, 1983; 56 FR 29409, June 27, 1991]

#### § 2.772 Authority of the Secretary to rule on procedural matters.

When briefs, motions or other papers listed herein are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary

or the Assistant Secretary are authorized to:

(a) Prescribe schedules for the filing of briefs, motions, or other pleadings, where such schedules may differ from those elsewhere prescribed in these rules or where these rules do not prescribe a schedule;

(b) Rule on motions for extensions of time;

(c) Reject motions, briefs, pleadings, and other documents filed with the Commission later than the time prescribed by the Secretary or the Assistant Secretary or established by an order, rule, or regulation of the Commission unless good cause is shown for the late filing;

(d) Prescribe all procedural arrangements relating to any oral argument to be held before the Commission;

(e) Extend the time for the Commission to rule on a petition for review under 10 CFR 2.786(b);

(f) Extend the time for the Commission to grant review on its own motion under 10 CFR 2.786(a);

(g) Extend time for Commission review on its own motion of a Director's denial under 10 CFR 2.206(c);

(h) Direct pleadings improperly filed before the Commission to the appropriate adjudicatory board for action;

(i) Deny a request for hearings, where the request fails to comply with the Commission's pleading requirements set forth in this part, and fails to set forth an arguable basis for further proceedings;

(j) Refer to the Atomic Safety and Licensing Board Panel or an Administrative Law Judge, as appropriate, requests for hearings not falling under § 2.104 of this part, where the requester is entitled to further proceedings; and

(k) Take action on minor procedural matters.

[39 FR 24219, July 1, 1974, as amended at 43 FR 22346, May 25, 1978; 46 FR 34794, July 6, 1981; 47 FR 47803, Sept. 28, 1982]

### RESTRICTED COMMUNICATIONS

#### § 2.780 Ex parte communications.

In any proceeding under this subpart—

(a) Interested persons outside the agency may not make or knowingly cause to be made to any Commission